

(e) In actions not based on an indictment, if the D&S Committee finds that the contractor's submission in opposition to the suspension raises a genuine dispute over facts material to the suspension, the D&S Committee shall submit to the suspending official the information establishing the dispute of material facts. However, the D&S Committee must first coordinate any further proceeding regarding the facts in dispute with the Department of Justice or with a State prosecuting authority in a case involving a State jurisdiction. VA will take no further action to determine disputed material facts pursuant to this section or 809.470 if the Department of Justice or a State prosecuting authority advises VA that additional proceedings to make such a determination would prejudice Federal or State legal proceedings.

(f) If the suspending official agrees that there is a genuine dispute of material facts, the suspending official shall refer the dispute to the designee for resolution pursuant to 809.470.

809.470 Fact-finding procedures.

The provisions of this section constitute the procedures to be used to resolve genuine disputes of fact pursuant to 809.406-3 and 809.407-3 of this chapter. The DSPE shall appoint a designee to conduct the fact-finding. OGC shall represent VA at any fact-finding hearing and may present witnesses for VA and question any witnesses presented by the contractor. The hearings shall be conducted in Washington, DC. The proceedings before the fact-finder will be limited to a finding of the facts in dispute, as determined by the debarring or suspending official. The fact-finder will establish the date for the fact-finding hearing, normally to be held within 45 working days of the submission of the dispute.

(a) The Government's representative and the contractor will have an opportunity to present evidence relevant to the facts at issue. The contractor may appear in person or through a representative at the fact-finding hearing. The contractor may submit documentary evidence, present witnesses, and confront any person the agency presents.

(b) Witnesses may testify in person. Witnesses will be reminded of the official nature of the proceedings and that any false testimony given is subject to criminal prosecution. Witnesses are subject to cross-examination. Hearsay evidence may be presented and will be given appropriate weight by the fact-finder.

(c) The proceedings shall be transcribed and a copy of the transcript shall be made available at cost to the contractor upon request, unless the contractor and the fact-finder, by mutual agreement, waive the requirement for a transcript.

(d) The fact-finder shall determine the disputed fact(s) by a preponderance of the evidence. As required by FAR 9.406-3(d)(2)(i) and 9.407-3(d)(2)(i), written findings of fact shall be prepared by the fact-finder. A copy of the findings of fact shall be provided to the debarring or suspending official, the Government's representative, and the contractor.

Subpart 809.5—Organizational and Consultant Conflicts of Interest

809.503 Waiver.

The HCA is delegated authority to waive any general rule or procedure of FAR Subpart 9.5. As provided at FAR 9.503, this authority may not be redelegated.

809.504 Contracting officer responsibilities.

(a) A contracting officer must determine whether awarding a contract will result in an actual or potential conflict of interest for the contractor.

(1) The contracting officer will make a conflict of interest determination after reviewing information submitted by offerors, evaluating information gathered under FAR 9.506, and exercising his or her own judgment.

(2) In evaluating possible organizational conflicts of interest, the contracting officer may obtain the advice of legal counsel and the assistance of technical specialists.

(b) If the contracting officer determines that there is no way to avoid or mitigate an organizational conflict of interest arising from a contract award,